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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. ROYCE FORD, JR., Defendant and Appellant.	A100574 (Alameda County Super. Ct. No. 138709)

Appellant Royce Ford was convicted by a jury of voluntary manslaughter (Pen. Code, § 192, subd. (a)) as a lesser included offense of a charge of first degree murder in the killing of his niece, April Matlock, and was sentenced to the upper term of 11 years in prison. He contends that the court erroneously excluded third-party culpability evidence and erroneously failed to instruct the jury on involuntary manslaughter. We affirm.

I. FACTS

Matlock's dead body was found by police on the afternoon of November 24, 1999, in her bedroom in the house where she lived with her mother Julia Ford, her brother Charles King, and her nephew David Dogens; appellant, who was Julia's brother, lived in a van behind the house. Matlock was lying on her back on a bed, covered with a blanket with her head exposed on a pillow, and there was a hole in her forehead. Blood had soaked into the pillow and the mattress and box springs of the bed, and there was blood spatter on the door leading from the bedroom to the kitchen, and blood and brain matter

on the bedroom walls. An autopsy showed that the cause of death was blunt trauma to the head from a very hard object; Matlock appeared to have been hit six or eight times, depending on the size of the weapon used.

Police were summoned to the scene by appellant, who placed calls to 911, first reporting that someone had broken into the house, and then that there was "blood all over" a bedroom. Julia Ford testified that she returned home from work that afternoon between 3:30 and 4:00 p.m., after buying some food. When she saw that her bedroom door had been kicked down, she ran outside. She saw appellant coming around from behind the house, told him that someone had been inside the house, and took appellant inside. She walked with appellant to King's bedroom and saw that the door to the room had been kicked down, the curtain was open, and King's clothes were thrown on the bed. She went into Matlock's room with appellant behind her, saw blood everywhere, and ran outside with him.

Julia, crying and hysterical, got in her car as her neighbor Traci Parker drove up. Appellant asked Parker if he could use her cell phone, and Parker suggested that he call 911. After appellant reported that there had been a break in, Julia left and drove to her father's shop. Parker said that appellant called his father on her phone after Julia left and told him that Matlock was "in there dead." Parker suggested to appellant that Matlock might still be alive and that he call 911 again. Appellant then placed the second 911 call, saying that after Julia told him she had seen blood, he went back into the house and saw blood in a room.

Officer Bellusa responded to the dispatch following the 911 calls, met appellant on the porch of the house, and went inside with him. Bellusa went through the house while appellant paced in the living room. Bellusa saw that Julia's bedroom door had been broken down, and that her room had been ransacked. He found Matlock's body, and radioed for assistance. Without telling appellant what he had seen, he asked appellant to wait in his patrol car; appellant said, "no problem," and Bellusa put him in the backseat of the car. Bellusa resumed searching the house, and then drove appellant to the police station. Bellusa said that, on the way to the station, appellant volunteered that he found

Julia crying when he got home, and saw Julia "thr[o]w her food, cookies all over the place" before storming out of the house.

At the police station, as detailed in our prior opinion upholding the denial of appellant's motion to suppress his taped confession, appellant eventually admitted that he and Matlock had fought, and that he had repeatedly hit her in the head with a hammer. (*Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 121-122.)

In his taped statement, appellant said that he woke up that morning between 7:30 and 8:00 a.m., and went into the house intending to eat and clean up. He had a ball peen hammer in his hand because he was going to put up some plants on the front porch. Matlock was the only one home. When she saw him in the kitchen, she accused him of breaking into the house and started screaming and cursing at him.[1] She threw something at him that sounded hard when it hit the wall, and then began punching him with something in her hand. He hit her with his fist to keep her away but when she did not stop he hit her in the face with the hammer, using a motion like "throwing a fastball overhand." He hit her in the chest, and harder in the face and forehead with the hammer until she fell on her bed, and then he covered her with a blanket.

Appellant said that he went to Julia's bedroom and kicked in the door to make it look like there had been a burglary in the house. He went to King's bedroom, kicked off the door, opened the window, and pushed out the screen to make it look like someone had left through the back window. He put the hammer back in the toolbox under the back stairs. In his statement, appellant said that he did not know whether he cleaned the hammer after hitting Matlock. Sergeant Joyner, one of the officers who took the statement, testified that in an untaped portion of the interview appellant admitted that he cleaned the hammer before returning it to the toolbox. In the statement, appellant said

[1] Appellant had a key to the gate in the cyclone fence that surrounded the house, but did not have a key to the house itself, and was not allowed in the house unless someone else was home. In his statement, appellant said that he had let himself in that morning through the unlocked back door, after knocking on the front door and getting no answer.

that he did not hear anyone come to the house that day; if someone had broken in, the dog would have alerted him and he would have heard it.[2]

Joyner and Sergeant Longmire, the other interviewing officer, said that appellant described Matlock to them as argumentative and foulmouthed; he said she was selfish and was someone who always wanted to be "queen." Julia testified that Matlock did "[n]ot really" like appellant and that the two did not always get along. Matlock had used "foul" language toward appellant and had called him "stupid." She made fun of him and would sometimes "just look at him and start laughing."

Police evidence technician Haymon arrived at the crime scene at 4:22 p.m. and saw the hole in Matlock's forehead; when Officer Bellusa first saw the body, he thought the head wound was from a gunshot. Forensic pathologist Van Meter performed an autopsy on the body the next day, and found lacerations and contusions around the cheek, ear and eye, including extensive bruising around the right eye, where the "eye globe itself was extremely hemorrhagic or bloody and was ruptured." Blood and brain matter had flowed out from a horizontal laceration on the forehead below the hairline where there was extensive skull fracturing. There was "extensive fracturing of the whole front half of the head," extending from the right eye to the left forehead and left side of the face. The multiple head fractures had a "puzzle-like" appearance and could only have been caused by the application of considerable force. The injuries could have been inflicted with a ball peen hammer. There were contusions on the hand and wrists and scars on the forearm that could have been "defensive wounds," but no injury or bruising to the chest.

Van Meter opined that Matlock had been alive, but might have been unconscious when the blows were struck; one blow from a ball peen hammer could have rendered her unconscious. Based on the blood spatter pattern in Matlock's bedroom, Sergeant Joyner believed that appellant had hit Matlock with the hammer while she was standing and after she fell on the bed. A marijuana joint and a lighter were found under Matlock's body,

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[2] A pit bull acted as a watchdog at the house; Julia said the dog liked appellant, but would bark and be "vicious" with strangers.

and blood tests showed that she had used heroin or morphine within four or five hours, and cocaine between eight and 18 hours, of her death. Van Meter testified that mixing cocaine and heroin can cause a person to become violent.

Technician Haymon found the stove in the house on and warm food on the dining room table; Officer Bellusa saw cookies scattered on the dining room floor. Julia's bedroom door had been kicked open. There was a footprint on the door; no attempt was made to determine whether it matched appellant's shoe. Dresser drawers in the room had been taken out and several small jewelry boxes had been opened, but the jewelry was still there. Wedding bands on top of the dresser were not taken; an inexpensive piece of jewelry in a bag in the bottom dresser drawer was the only missing item. Joyner thought the room looked "staged," because the drawers did not appear to have been rummaged, and jewelry and perfume bottles had not been removed or destroyed.

When Sergeant Longmire walked through the house, he noticed that the window to King's bedroom in the back of the house was open. Haymon observed that the screen on the window was partially pulled out, and there were smudge marks on the outside pane of the window as if someone had pushed it up. Outside under the window was a bucket on which someone trying to get in through the window might have stood. The door from King's bedroom into the house had been pried open from the inside.

Haymon noticed a ball peen hammer, covered with a greasy substance, under the back porch. He did not initially think that the hammer was associated with the crime, and did not collect it until the next day. No blood was found on the hammer. Forensic Biologist Mihalovich opined that all of the blood on the hammer could have been removed if it had been rigorously washed with water. She thought that it would have been more difficult, but not impossible, to remove the blood with oil. There were no marks on appellant, and no blood on his clothes. There was no blood leading from the house to appellant's van, no evidence of blood in the van, and no evidence that a bloody mess had been cleaned up in the van or outside Matlock's bedroom. The three usable fingerprints in the house did not match those of appellant or anyone in the California ID system, a database of prints collected in connection with arrests and employment.

David Dogens, Julia's nephew who resided in the house, testified for the defense that he saw appellant on the day Matlock was killed, when he returned home after working for several hours at a car wash. He wanted to pick up his bike but did not have his key to the gate with him. Appellant came out of his van and told Dogens that no one was home. Dogens said that appellant seemed "normal; probably just woke up." Dogens returned to the car wash after getting his bike.

Dogens had seen appellant and Matlock argue from time to time, but he never saw Matlock be physically aggressive toward appellant, and thought they had a good relationship. Although Matlock "sometimes talked bad" to appellant, Dogens said that appellant would walk away and not cuss back. Jackie Perry, who was Dogens' mother and appellant and Julia's sister, said that she and appellant and Matlock smoked crack together "all the time" in appellant's van, and that appellant got along fine with Matlock. She never saw appellant argue or be violent. Perry's daughter, Sonia Dogens, said that appellant was kind to Matlock, and that they got along and loved each other. Royce Ford Sr., appellant and Julia's father, believed that Matlock loved appellant and that they had a good relationship. He said that appellant was not aggressive, and that he had never seen appellant get into a physical fight.

Royce Sr. said that appellant sounded like he was in shock when he called him on the day Matlock was killed, and reported that "something" had happened to Matlock and that he had called the police. He had heard appellant's taped confession and did not think it sounded like appellant's "wording" or the way he would speak; there was too much hesitation, pausing and thinking.

Appellant took the stand and repudiated his taped confession. As recounted in our prior opinion, appellant arrived at the police station around 5:15 p.m. on the day of the killing, and was placed in a small locked room before being questioned for about an hour beginning at 12:07 a.m. The questioning resumed at 2:39 a.m., and appellant provided his taped statement at 3:50 a.m.

Appellant said that he thought he was under arrest at the house when the police asked him if he would wait in a squad car, patted him down, and said he needed to go to

the station to answer questions. He said that he waited in the room at the station for four hours before anyone came to see him. During that time he knocked on the door four or five times because he had to go to the bathroom. When no one answered, he "[p]eed in the room." He was not sure whether he was under arrest by the time the police interviewed him; he thought he could go after he answered their questions. During the first hour of questioning, the officers kept asking him over and over what he had done that day; it seemed like they did not believe what he was saying. When the officers suggested that Matlock might have been raped, he agreed to give blood to prove his innocence. The officers took him to a Jack-in-the-Box on the way to the hospital. They said he was not handcuffed because they trusted him. He thought he would be allowed to go home after giving the blood sample, but was told when they got back to the station that there would be further questioning. By that point, he was "tired, drained, and just out of it."

When the interrogation resumed, the officers told him, falsely, that a neighbor had seen him go into the house that day. He kept denying that he had been in the house, and the officers kept saying that he was lying. Appellant testified that, after awhile, he "just gave up." "[I]t wouldn't have made no sense," appellant said, "if I have kept on fighting. They wasn't going to stop. They wasn't going to give up until what—I gave them what they wanted to hear." He thought that if he told the officers what they wanted to hear "they would just let me go." He said that, if he gave an answer Sergeant Joyner did not like, Joyner would touch him on the leg, like an "experiment on a rat." From the way he was being treated, he thought he must have killed Matlock. "The way he kept asking questions, kept asking questions, seemed like he was leading me. I followed," appellant said. Later, when he listened to the taped confession, he thought, "that's not me."

Appellant said that he woke up between 9:00 and 10:00 a.m. on the day of the killing, and knocked on the door to the house, but no one answered. He returned to the van, got some tools, and hung a plant on the front porch of the house. He took a walk, got some coffee, and then watched television. He was in his van with a friend, Tina Smith, from noon until 3:00 p.m.; she shot heroin and he smoked crack. Dogens came

home for his bike around 1:00 p.m., and appellant heard nothing unusual between 1:00 and 3:00 p.m. Smith left, and appellant was nearly asleep when Julia called to him and said that someone had broken into the house.

Appellant said he told Julia that he had not been in the house, and that no one could have gone into the house because he had not heard anyone. When he went into the house with Julia, Julia went by Matlock's room, but they did not go into that room. When he returned to the house after Julia left, he saw blood on the wall of Matlock's room, but he did not go into the room and did not know whether Matlock was there. Appellant contradicted Traci Parker's testimony and denied telling his father, in the call he placed between the two to 911 that Matlock was in the house dead. He did not know what happened to Matlock before the police started questioning him later that night. He did not know why he told the dispatcher in the second 911 call that Matlock might be in the room with the blood. When he told the dispatcher that he had been "gone all day," he meant that he had not been in the house that day. On cross-examination, appellant said that he had never been violent toward women or gotten into a heated argument with a woman.

Richard Leo testified for the defense as an expert in interrogation techniques and false confessions. Leo said that most confessions are true, but that coercive interrogation techniques can produce false confessions. He acknowledged that a confession can be generally true, even if it contains some lies, and that suspects sometimes give true accounts of events, then later recant.

Sheila Ford, appellant and Julia's sister, testified for the prosecution in rebuttal that she and appellant frequently argued about drugs, and that during one of their arguments appellant threw a fork at her. She had seen appellant and Matlock argue and curse at each other "maybe twice." She said that appellant generally kept his cool, and that he was the one the family turned to for help in emergencies.

II. DISCUSSION

A. Third-Party Culpability

Appellant contends that the court erroneously excluded third-party culpability evidence. At a pretrial hearing, the defense indicated that Sergeant Longmire would confirm that King and David Dogens reported that Matlock had been threatened the night before she was killed. At trial, the court allowed evidence of the drugs in Matlock's system at the time of her death, but would not allow Longmire to be cross-examined on whether David Dogens told him that Matlock had argued with "some dude" on the porch "about 1930 to 2200" the night before she was killed. During the defense case, appellant was denied leave to introduce testimony that Matlock had stolen a large quantity of illegal drugs a week before she died, that she had seemed afraid after the theft, and that the night before she was killed she had argued outside the house with at least two men who told her, "We don't get our money, we're going to physically hurt you." After the parties rested, the defense reiterated that it had been prepared to establish that Matlock had been threatened because of drugs she had stolen. The court reaffirmed its rulings that this evidence "such as it may be, is not relevant," and that the evidence was in any event inadmissible under Evidence Code section 352.

To be admissible, evidence of third-party culpability must be capable of raising a reasonable doubt as to the defendant's guilt. (*People v. Hall* (1986) 41 Cal.3d 826, 833.) "[E]vidence of mere motive or opportunity to commit the crime in another person, without more, will not suffice to raise a reasonable doubt about a defendant's guilt: there must be direct or circumstantial evidence linking the third person to the actual perpetration of the crime." (*Ibid.*) "Once a defendant's evidence has been found to raise a reasonable doubt it may still be excluded 'when the court properly exercises its discretion under Evidence Code section 352 to reject evidence that creates a substantial danger of undue consumption of time or prejudicing, confusing, or misleading the jury.' " (*People v. Von Villas* (1992) 10 Cal.App.4th 201, 265.) The issue on appeal is whether the trial court's ruling on the matter was an abuse of discretion. (*People v. Sandoval* (1992) 4 Cal.4th 155, 176.)

In appellant's view, the ransacking of the house was evidence that linked the unidentified assailants with Matlock's killing. That little of value was taken, he submits, was equally "consistent" with the staged burglary to which he confessed, and a break-in by intruders who wanted to reclaim stolen drugs, extract payment, or take revenge on Matlock. He finds further circumstantial support for the intruder theory in the fingerprints that were found in the house that did not belong to him.

In our view, something more is required to "link" a third-party suspect to a crime other than mere "consistency" between the defendant's theory and the other evidence. In this case, various third-party scenarios other than revenge-for-stolen-drugs were possible: Matlock might have been killed trying to stop a "real" burglary where theft of valuable items was originally intended, but then abandoned after the killing; she might have been killed by someone she knew other than appellant, who then tried to stage a burglary, as appellant professed to have done, to cast suspicion on strangers, etc. The evidence no more "links" Matlock's death with the killers appellant posited than with any number of other hypothetical killers.

Evidence that serves to link a third-party with a murder was discussed in *People v. Hall, supra,* 41 Cal.3d at p. 833. The victim in that case was strangled by someone left-handed, and "waffle-stomper" shoe prints were found in the victim's bedroom. (*Id.* at pp. 829-831.) The third-party was an identified individual who: was left-handed; wore "waffle-stomper" shoes; and knew intimate details of the crime not mentioned by the defendant. Nothing comparable was offered here to link the alleged third-party killers to Matlock's death. The only proof in this case was testimony that unidentified individuals were angry with Matlock for stealing drugs, and physical evidence that did not preclude the possibility that those persons (or others) might have killed her. This was proof of mere motive and possible opportunity that did not raise a reasonable doubt of appellant's guilt. (*Id.* at p. 833.)

Even if there were an adequate foundation for third-party culpability evidence in this instance, the court had discretion to exclude it under Evidence Code section 352. (*People v. Von Villas, supra,* 10 Cal.App.4th at p. 265.) In *People v. Kaurish* (1990) 52

Cal.3d 648, 684-685, the defendant was prevented from introducing evidence that the victim had stolen money and property from an identified third-party who had threatened to "get even." There was no abuse of discretion in finding that the "probative value, if any, of this evidence was substantially outweighed by the possibility of jury confusion and undue delay." (*Id.* at p. 685.) The evidence here is even weaker than in *Kaurish* because the third-party suspects in this case are unidentified. Given *Kaurish* and other decisions like it that have upheld exclusion of evidence of the sort proffered here (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1136-1137 [evidence that "Pablo or some other third party involved in drug trafficking had a motive or possible opportunity" to commit the murder]; *People v. Edelbacher* (1989) 47 Cal.3d 983, 1017-1018 [evidence that victim sold drugs and ran around with "Hell's Angel-type people"]), the evidentiary ruling in this case cannot be deemed an abuse of discretion.

Appellant argues that exclusion of the evidence violated his constitutional rights, but those rights were not implicated by the court's application of the rules of evidence. (*People v. Hall*, *supra*, 41 Cal.3d at pp. 834-835.)

B. Involuntary Manslaughter

Appellant argues that the court erred in refusing his request to instruct the jury on involuntary manslaughter. The jury was instructed on unreasonable self-defense, and sudden quarrel/heat of passion theories of voluntary manslaughter. Appellant maintains that an instruction on the lesser-included offense of involuntary manslaughter was required because the jury could have found from the evidence that he acted in unreasonable self-defense without an intent to kill when he attacked Matlock. (See *People v. Blakeley* (2000) 23 Cal.4th 82, 92.) However, given the savagery of the attack—multiple hammer blows that left a "puzzle-like" pattern of fractures in Matlock's skull—and appellant's failure to render aid or assistance after the assault, it is not reasonably probable the jury would have found that he lacked an intent to kill. Therefore, any error in refusing to instruct on involuntary manslaughter was harmless. (*Id.* at p. 93; *People v. Breverman* (1998) 19 Cal.4th 142, 165, 178; *People v. Watson* (1956) 46 Cal.2d 818, 836.) There is no merit to appellant's contention that a different standard of

prejudice applies because there was a refusal of a requested instruction, not a mere failure to instruct sua sponte, in this case. (*People v. Breverman, supra,* at p. 178 [*Watson* applies to "error in failing sua sponte to instruct, *or* to instruct fully" on lesser included offenses; italics added]; *People v. Blakeley, supra,* at pp. 93-94 [*Watson* applied where requested instruction was refused].)

III. DISPOSITION

The judgment is affirmed.

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Kay, P.J.

We concur:

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Sepulveda, J.

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Rivera, J.